FIFTY-NINTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1981 82)

(SEVENTH LOK SABHA)

PURCHASE CONTRACTS IN TWO COMMANDS

MINISTRY OF DEFENCE

[Action taken on 137th Report (Sixth Lok Sabha)]

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*Presented to Lok Sabha on*_____

*Laid in Rajya Sabha on*_____

LOK SABHA SECRETARIAT
NEW DELHI

August, 1981/Bhadra, 1903 (Saka)

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Corrigenda to 59th Report of PAC (7th Lok Sabha)

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PUBLIC ACCOUNTS COMMITTEE (1981-82)

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Satish Agarwal

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1. Shri H. G. Paranjpe—*Joint Secretary.*
2. Shri D. C. Pande—*Chief Financial Committee Officer.*
3. Shri K. C. Rastogi—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Fifty-Ninth Report on action taken by the Government on the recommendations of the Public Accounts Committee contained in their Hundred and Thirty-Seventh Report (Sixth Lok Sabha) on Purchase contracts in two Commands. The Committee had in the earlier Report expressed deep concern over infructuous expenditure due to delay in the finalisation of tenders for the Supply Depots in a Command. In September, 1978, the Ministry of Defence had issued instructions modifying the procedure for award of contracts with a view to ensuring their timely conclusion at most economical rates. The procedure was to be reviewed after two years i.e., in November, 1980. The Committee have found that the Ministry's note dated 23 July, 1981 is silent on the question whether the procedure has since been reviewed. The Committee have desired that this may be done without loss of time with a view to ensuring that the delays of the type commented upon by the Committee in their earlier Report, leading to heavy infructuous expenditure are obviated.

2. On 1 July, 1981, the following Action Taken Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Public Accounts Committee in their earlier Reports:

1. Shri Satish Agarwal—*Chairman*

2. Shri Sunil Maitra
3. Shri K. P. Singh Deo
4. Shri Hari Kirshna Shastri — Members
5. Shri K. P. Unnikrishnan
6. Shri N. K. P. Salve

3. The Action Taken Sub-Committee of the Public Accounts Committee (1981-82) considered and adopted the Report at their sitting held on 1 September, 1981. The Report was finally adopted by the Public Accounts Committee (1981-82) on 7 September, 1981.

4. For reference facility and convenience, the recommendations and observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix II to the Report.

5. The Committee place on record their application of the assistance rendered to them in this matter by the Office of the Comptroller & Auditor General of India.

NEW DELHI;
September 8, 1981.
Bhadra 17, 1903 (S).

SATISH AGARWAL,
Chairman
Public Accounts Committee.

REPORT

1.1. This Report of the Committee deals with the action taken by the Government on the recommendations contained in the Hundred and Thirty-Seventh Report of the Public Accounts Committee (Sixth Lok Sabha) on Paragraph 43 of the Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Defence Services) relating to purchase contracts in two Commands. The Hundred and Thirty-Seventh Report was presented to the Lok Sabha on 30 April, 1979.

1.2. Action Taken notes have been received from Government in respect of all the 20 recommendations/observations contained in the Report. These have been categorised as follows:—

(1) *Recommendations or observations that have been accepted by Government.*

Sl. Nos. 1,2,3,5,6,8,9,12,13,15,17,18, and 19.

(ii) *Recommendations or observations which the Committee do not desire to pursue in view of Government's reply.*

Sl. Nos. 4,14, and 20.

(iii) *Recommendations or observations in respect of which replies of Government have not been accepted by the Committee and which require reiteration.*

Sl. Nos. 10 and 11.

(iv) *Recommendations or observations to which Government have furnished interim replies.*

Sl. Nos. 7 and 16.

1.3. The Committee require that final replies to the recommendations in respect of which interim replies have been furnished, should be submitted expeditiously.

1.4. The Committee will now deal with action taken by Government on some of the recommendations.

Infructuous expenditure due to delay in finalisation of tenders
(Sl. Nos 10 and 11—Paragraphs 1.185 and 186)

1.5. Commenting on the delay in finalisation of tenders for supply of meat in supply Depots in Command I, resulting in additional expenditure,

the Committee had in Paragraphs 1.185 and 1.186 of their 137th Report (Sixth Lok Sabha) observed as follows:

"Para 1.185. The Committee are deeply concerned to note that due to delay in the finalisation of tenders for the supply of meat in Supply Depots in Command I, Government had to incur quite a substantial amount of additional expenditure both in the shape of contracting at higher rates than those initially tendered and also effecting local purchases of meat at higher rates during the intervening 'no contract' periods. On persuing the reasons for the delays in contracts relating to some Supply Depots in the Command, the Committee are firmly of the opinion that with proper planning and concerted approach, these delays could have been eliminated and the contracts finalised in time. Some instances of such delays in respect of some Supply Depots for the meat contracts for the period 1 October 1976 to 30 September 1977 and the resultant infructuous expenditure are listed below:—

(i) Contract for Supply Depot No. 1 was concluded with contractor 'A' on additional call on 23 November, 1976 and commenced on 29 November, 1976. Contractor 'A' did not quote in the initial call. During the 'no contract' period upto 28 November, 1976, meat supplies were arranged by effecting local purchase at the average local purchase rate of Rs. 835 per 100 kgs. An approximate additional expenditure of Rs. 1,10,160 and Rs. 1,92,780 as compared to the previous and future contract rate of Rs. 767 and Rs. 715.80 respectively was incurred.

(ii) The contract for Supply Depot No. 2 was concluded with Contractor 'A' at Rs. 934.80 per 100 kgs. on 29 January, 1977 as the authorities could not give timely acceptance to the offers of Rs. 727 of Contractor 'D' and Rs. 734 of Contractor 'C'. This has resulted in additional extra expenditure of Rs. 6.16 lakhs by way of increased rate and Rs. 1.40 lakhs on account of local purchases made from Contractor 'A' itself.

(iii) Contract for Supply Depot No. 3 was awarded to Contractor 'A' for the period 9-12-1976 to 30-9-1977 at the rate of Rs. 737 per 100 kgs as a result of third call when a tenderer had quoted Rs. 625 per 100 kgs in August 1976 in response to first call, but it could not be accepted before the date of commencement of the supplies. Contractor 'A' did not quote in the earlier calls.

(iv) Contract for Supply Depot No. 4 was awarded to contractor 'B' at the rate of Rs. 786 per 100 kgs. as a result of second tender floated in January 1977, as the authorities could not give timely acceptance to the quotation of August 1976 for Rs. 687 from contractor 'F' and later on reduced to Rs. 611 on 10 September, 1976 as a result of negotiations. The delay has resulted in an extra expenditure of Rs. 4.92 lakhs.

The delay is more serious in view of the fact that while seeking approval of the QMG on 13 October, 1976, the Command HQ had clearly indicated that the offer was valid upto 1 November, 1976. But the tender was approved by QMG only on 3 November, 1976 after the expiry of the validity of offer.

(v) The contract for Supply Depot No. 5 was finalised with contractor 'B' at the rate of Rs. 795 per 100 kgs only for the period 16-4-1977 to 30-9-1977 due to delay in not giving timely approval to the negotiated rate of Rs. 670 per 100 kgs, negotiated on fourth call with contractor 'G' resulting in extra expenditure of Rs. 3.04 lakhs."

"Para 1.186. The Committee are unhappy to note that the instructions issued by Ministry of Defence in August 1971 that the administrative authorities should take all possible steps to obviate delays in finalising contracts so as to avoid consequential loss to the Government have had no effect on the authorities concerned and delays continue to occur causing irreparable loss to the public exchequer. The Committee have been informed that recently the Ministry have evolved a procedure which will be tried on experimental basis for two years to overcome delays in the finalisation of such contracts. According to this procedure the tenders are to be jointly examined by a panel of officers comprising Executive Officer and representatives of CFA and CDA. The Committee would impress upon the authorities to closely watch the practical working of this procedure with a view to further improving the procedure, if necessary, in the light of experience."

1.6. Action Taken Note dated 23 July, 1981 furnished by the Ministry of Defence reads as follows:—

"Headquarters Commands have already been asked to keep a close watch on the functioning of the new procedure for conclusion of ASC contracts introduced *vide* Govt. of India Min. of Defence letter No. A/42099/Q/ST5/6438/D (Qs) dated

25 Sept. 78 (copy attached) (Appendix I) and submit a detailed report through respective CsDA so as to reach this Headquarters by 15 Nov., 80.

The procedure will be reviewed after 15 Nov.|, 80 on receipt of detailed reports/recommendations from Commands|CsDA."

1.7. The Committee had expressed deep concern over infructuous expenditure due to delay in the finalisation of tenders for the supply of meat in Supply Depots in a Command. The Committee had felt that with proper planning and concerted approach, these delays could have been eliminated and the contracts finalised in time.

1.8. The Committee note that in September, 1978, the Ministry of Defence issued instructions modifying the procedure for award of contracts with a view to ensuring their timely conclusion at most economical rates. The Market Research Cells in different Area Hqrs. were made responsible for formulating average market rates for each item/station in their jurisdiction for each quarter based on market survey and study|evaluation of all reports|data compiled and published by local|provincial|Central Government Departments/agencies. The compilation and the process of arriving at the rate pattern was to be done in close consultation with and advice of the concerned Controller of Defence Accounts. The procedure was to be reviewed after two years (i.e. in November 1980). . . . . .

1.9. The Committee find that the Ministry's note dated 23 July 1981 is silent on the question whether the procedure has since been reviewed. Apparently, no such review seems to have been carried out. The Committee desire that this may be done without loss of time with a veiw to ensuring that delays of the type commented upon by the committee in their earlier Report, leading to heavy infructuous expenditure are obviated.

CHAPTER II

RECOMMENDATIONS OR OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

According to the records maintained by the Controller of Defence Accounts, the value of purchases of meat made by the Supply Depots during 1972-73, 1973-74, 1974-75, 1975-76 and 1976-77 was Rs. 2.55 crores, Rs. 2.13 crores, Rs. 5.17 crores, Rs. 3.13 crores and Rs. 4.04 crores respectively. However, according to the figures intimated by the Ministry of Defence to Audit the value of purchases of meat during these years was Rs. 3.00 crores, Rs. 2.75 crores, Rs. 1.45 crores, Rs. 3.63 crores and Rs. 4.31 crores respectively. The Committee are displeased at the wide variations between the figures indicated by the Controller of Defence Accounts and those intimated by the Ministry of Defence to Audit and desire that the Ministry should have these two sets of figures reconciled.

[Serial No. 1 (Para 1.176) of Appendix to 137th Report of PAC (6th Lok Sabha)]

Action Taken

As desired by the Committee, the figures given by CDA and as given by the Ministry of Defence, have been reconciled. The reasons for earlier variations are as under:—

(a) Figures given by Ministry of Defence also included the amounts spent on local purchases of meat where contracts were not in operation while the figures of CDA did not include the same.

(b) For Rajasthan Sector the figures of Short Term Agreements for supply of meat were also not included by the CDA.

(c) The CDA had taken into account only those contracts which were exclusively for meat whereas the Ministry of Defence had also taken into account cost of meat purchases where meat was included in combined items contracts.

(d) While compiling the figures in few cases while CDA took calculations by contract periods, the Ministry of Defence had compilation for financial years. In certain cases due to delayed

conclusion of contracts overshooting the period, there is variance in figures submitted specially in 1972-73 and 1974-75. It will, however, be noticed that if the entire period from 1 April, '72 to 31 March, '77 is taken in its totality then the overall figures as given by CDA and those given by the Ministry of Defence have marginal difference.

[Ministry of Defence O.M. No. 66062|Q|ST-5|3639|D(QS) dated 23 July, 1981].

Recommendation

The Committee note that according to the procedure laid down by QMG's Branch in May 1968, there was no provision for inviting tenders separately for meat fresh and edible offals. According to the Ministry of Defence, till 1970, the issue of meat fresh throughout India was to be made by calling tenders only for meat fresh including offals which were specified to be edible and were acceptable to the contract operating officer depending on the troops requirement and preference. However, on an inspection by Army Headquarters of Command I in 1968, it was found that, unlike the other Commands, this Command was tendering for dressed meat and offals, separately and were paying higher price for offals than for dressed meat. It was, therefore, suggested by the Army Headquarters Inspecting Officers that this Command should consider falling in line with other Commands. The Committee are unhappy to note that due to Command I following a procedure different from the one followed by the other Commands, this Command had to incur additional expenditure for a long time in purchasing offals at the rates higher than those for dressed meat. The Committee would like to know the reasons for deviation by this Command from the uniform procedure followed by the other Commands. They would also like to know as to how the Army Headquarters|QMG's Branch ensure that prescribed procedure in such matters is followed uniformly by all the Commands.

[Serial No. 2 (Para 1.177) of Appendix to 137th Report of PAC (Sixth Lok Sabha)]

Action Taken

Headquarters, Southern Command adopted a different procedure by asking separate rates for meat with offals and of offal alone as it was felt that there was a need for getting rates of meat in two parts of a schedule to facilitate a cooperative study of rates of meat one with specified offals separately and the other along with all such edible offals. Because of peculiarities of requirements of meat and offals due to Training Establishments of officer cadets in the Command, the Schedule and the relevant special condition was modified by HQ Southern Command, in terms of Rule 234, FR Part I under which Command Headquarters are competent to do so

in consultation with CDA concerned. The background information giving genesis as to how the contingency of adopting this procedure as compared to the one followed in other Commands was felt necessary has already been elucidated in answer to Questions and advance information of the report of Comptroller and Auditor General for 1976-77 (audit para 43) (Refer to paras 1.74 on page 19, 1.77 on page 21, 1.78 and 1.79 on page 22, 1.80 on page 22, 1.81, 1.82, 1.83 and 1.84 on page 23 and 1.86 on page 24).

2. As per Rule 234, FR Part I:—

(a) While initially framing the contract deeds, the terms of a contract must be precise and definite and there should be no room for ambiguity or misconstruction therein.

(b) As far as possible, legal and financial advice should be taken in the drafting of contracts before they are finally entered into.

3. In consideration of above FR, contract forms of general applicability (like IAFZ-2137-A, 2120, 2121 and 2124) have been made centrally for all Commands in consultation with legal|financial advisers. The other conditions of the contract have, however, been made by Commands themselves as the conditions prevailing in each Command differ from area to area. However, whenever any amendment is proposed to the printed forms mentioned above, prior approval of CDA and sanction of GOC-in-C or the Director concerned at Army HQ is invariably obtained. Consequent to the discussion of audit para 43 for the year 1976-77 it has been decided that any alteration/additions/modification in the contract forms under Rule 234 of FR Part I should also be carried out in consultation with financial and legal authorities of the Government of India. All concerned have been informed accordingly.

[Ministry of Defence O.M. No. 66062|Q|ST-5|3639|D(QS) dated 23 July, 1981]

Recommendation

The Committee regret to note that even when the Army Headquarters had suggested to Command I in 1968 to consider falling in line with the other Commands in the matter of procedure for inviting tenders for finalisation of meat contracts, the Command continued till 1971, to follow the procedure of calling quotations separately for 'meat fresh' and certain specified items of edible offals. It was only in the year 1971 that change was effected in this Command, in the schedule to the tender, which was still not in conformity with the procedure followed in the other Commands,

as laid down by the QMG's Branch. According to this modified procedure of 1971, contractors were required to specify rates in two parts—Part I for 'meat fresh' and specified edible offals, and Part II for meat fresh including edible offals. Although in Part II the rate for meat was inclusive of edible offals, there was a clause in the special conditions to the contract which provided that edible offals, such as kidneys, liver, tongue, brain and sweet bread if required, will be taken over for issue at the rate of meat fresh. According to the Ministry, this modification was decided as a result of extensive examination in a meeting held in the office of the Controller of Defence Accounts and in consultation with the Brigadier Army Service Corps of the Command with the object to have comparison of rates of meat with specified offals and that of meat and specified offals separately. Contracts for meat from 1971-72 in this Command were concluded and administered under this modified procedure. Strangely enough, this modified procedure was introduced in Command I from 1971, without consulting the QMG's Branch and even the Legal Authority explaining his viewpoint about the failure of the authorities to obtain legal advice. With regard to effecting this modification, the Defence Secretary informed the Committee during evidence that "it was not done; it would have been desirable to do so". The Committee can at this stage only deprecate this lapse which proved to be very costly.

[Serial No. 3 (Para 1.178) of Appendix to 137th Report of PAC (Sixth Lok Sabha)]

Action Taken

Necessary administrative instructions to Commands have been issued vide Army HQ letter No. 47503|Q|ST5|Q1(B) dated 28 April 1979 (Annexure) that any alteration|modification|addition in the contract forms under Rule 234, FR Part I will be carried out in consultation with financial and legal authorities of the Government of India. Action for issue of amendment to Rule 234 FR Part I has been initiated as per draft sub para given below, which will be added to the existing rule:—

> "Any modifications to the Schedule IAFZ-2121 and 2121-A and printed forms IAFZ-2137A, 2120 and 2124 and any other relevant conditions of the contract so desired to be carried out must be got vetted by the legal authorities of Ministry of Law before changes are finally effected in the contract documents".

[Ministry of Defence O.M. No. 66062|Q|ST-5/3639|D|QS dated 23 July, 1981]

ANNEXURE

Quartermaster General's Shakha
Thal Sena Mukhalaya
Quartermaster General's Branch
Army Headquarters
DHQ PO New Delhi-110011

28 April, 1979

47503|Q|ST5|Q1(B)

Headquarters
Southern Command
Eastern Command
Western Command
Central Command
Northern Command

MODIFICATION|ALTERATION|ADDITIONS IN FORMS USED IN EXECUTION OF ASC CONTRACTS

1. It has transpired in the course of discussion of Audit Para 43 for the year 1976-77 by the Public Accounts Committee that certain clauses in the forms intended for execution in ASC contracts were modified|supplemented without obtaining the prior approval of the legal authorities.

2. It has, therefore, been decided that any alteration|additions|modification in the contract form under Rule 234 of Financial Regulation Part I should be carried out in consultation with the financial and legal authorities of the Government of India. Please ensure that this procedure is adhered to in all cases without exception.

3. In case any clauses have been so modified without consulting the legal advisers in the past, the same should be now vetted by the appropriate legal expert.

4. Please acknowledge.

Sd./- * * * *
(Curian Joseph)
Maj.
DAQMG Q1(B)
Quartermaster General

Recommendation

The Committee note that due to the ambiguity in the definition of offals in the special conditions of the contract inserted as a result of modifications made in 1971, the Government lost both the cases in arbitration on disputes arising out of non-acceptance of offals alongwith the supplies of meat by Supply Depots No. 1 and 2 from contractor 'A'. Consequently, Government had to pay huge amounts of Rs. 1.75 lakhs and Rs. 3.99 lakhs (including interest) to the contractor in satisfaction of both these awards. Even the civil court, before whom the award relating to Supply Depot No. 1 was contested, held that there was room for ambiguity in the definition of edible offals in the special condition of the contract. The Defence Secretary also plainly conceded during evidence before the Committee that"..... this clause is not entirely clear. It is somewhat ambiguously worded." The Committee were also informed during evidence that the necessary modifications were made in the tender in the year 1977 to clear the ambiguity as pointed out by the court. But the defence Secretary assurred the Committee that he would take further look at this 1977 reform to see whether there was need to further improve it. The Committee would like to know the conclusive steps taken in fulfilment of the assurance given by the Defence Secretary to them. The Committee hope that steps envisaged as a result of Defence Secretary's examination would be taken in consideration with the Ministry of Law.

[Serial No. 5 (Para 1.180) of Appendix to 137th Report of PAC (Sixth Lok Sabha)]

Action Taken

The existing clause has been re-examined in consultation with Commands, Medical authorities, RV Directorate at Army HQ, Ministries of Defence, Finance (Defence) and Law. Based on the recommendations of Commands, view of Ministries and observations of the Public Accounts Committee, the existing clause pertaining to meat officials has been recast as under to make it more simple and free from any ambiguity:—

"1.I/We agree that I|We will supply meat dressed (Jhatka|Halal) as per A C Specification No. 115, including liver, kidneys and testicals passed fit by VO/Contract operating officer of the total arisings of carcasses and as a part of meat dressed at the rate of meat dressed (Jhatka/Halal) by weight as given in the schedule. Any other offals, cuttings and arisings of meat carcass will not be taken over by the contract operating officer. The same will be removed by me/us and will be disposed of by me/us in any manner I/We like at my/our cost.

2. I/We further agree that I/We will supply any additional requirement of kidney and or liver (without meat by weight) at the same rate as meat, dressed (Jhatka/Halal) as given in the schedule and as demanded by the contract operating officers."

2. The revised clause as above, duly vetted by the Solicitor to the Government of India, has been incorporated in the "Special Conditions for the Supply of meat dressed" which forms part of the contract deed, vide Army HQ letter No. 47503/Q/ST5/Q1(B) dated 27 Oct. 79 (Annexure).

[Ministry of Defence O.M. No. 66062/Q/ST-5/3639|D|Q5 dated 23 July, 1981]

Annexure

Quartermaster General's Branch
Army Head Quarters
DHQ PO. New Delhi-110011.
27 Oct 79

47503/Q/ST5/Q1(B)

Headquarters
Southern Command
Eastern Command
Western Command
Central Command
Northern Command

SPECIAL CONDITIONS FOR THE SUPPLY OF MEAT FRESH, ACCEPTANCE OF EDIBLE OFFALS

1. Reference this HQ letter No. 47503/Q/ST5/Q1(B) dated 02 Feb 79 and your replies thereto.

2. In pursuance of the discussion by the Public Accounts Committee in Dec. 1978, the existing clause—special conditions on acceptance of specified meat offals, has been carefully examined and it has been decided in consultation with the Ministry of Law that the clause pertaining to edible offals introduced vide this HQ letter No. 47503/Q/ST5/Q1(B) dated 09 Sep 77 be replaced by the revised clause given below.

3. *Draft clause of special conditions for meat contract acceptance of edible offals*

"I/We agree that I/We will supply meat dressed (Jhatka/Halal) as per ASC specification No. 115, including liver, kidney and testicales passed fit by VO/Contract operating officer on total arising of carcasses and as a part

of meat dressed at rate of meat dressed (Jhatka/Halal) by weight as given in the schedule. Any other offals, cuttings and arisings of meat carcass will not be taken over by the contract operating officer. The same will be removed by me/us and will be disposed of by us in any manner I/We like at my/our cost.

I/We further agree that I/We will supply any additional requirement of kidney and liver (without meat by weight) at the same rate as meat dressed (Jhatka/Halal) as given in the schedule and as demanded by the contract operating officer."

4. The revised clause may replace the existing clause in special conditions for meat contract in terms of FRI Part I, Rule 234 to form part of the contract documents to be executed by you from the date administratively convenient to you keeping in view the public interest.

5. Please acknowledge.

Sd/-

(Curian Joseph)
Maj
Offg. AQMG (Staff and Coord)
for Quartermaster General.

Recommendation

The Committee note that the court in their decision on the arbitrator's award relating to Supply Depot No. 1 had inter alia observed "....it is rather to be regretted that the Government should have taken in the attitude of resisting the award made by the arbitrator who was none other than the Commander of.....Sub Area..... Even under.....the general special conditions.....it is the decision of the Sub-Area Commander that is final and binding on both the parties". Further, according to the Ministry, the four cases decided against the Government were adjudicated by Sub Area Commander who can be said to have direct administrative control over the supply. On an enquiry by the Committee as to why Sub-Area Commander was then appointed an arbitrator of his own decision, they were informed by the Ministry of Defence through a note that "it would not be correct to mix the office of Sub-Area Commander with that of the arbitrator as in the first capacity he acts as an administrative authority and in the subsequent capacity he acts as a jurist after divesting himself from all the strings which are attached to his office as an administrator." But subsequently, the representative of the Ministry of Defence clarified during evidence that "in both the cases relating to Supply Depots No. 1 and 2 the

arbitrators were different. They were holding the same appointment but different individuals." The Committee believe that this aspect was not put across in the court sufficiently convincingly as otherwise the court would not have observed: "The fact that he gave his decision as the arbitrator and not as a Sub-Area Commander exercising administrative authority does not in reality make the decision any the less than that of the Sub-Area Commander".

[Serial No. 6 (Para 1.181) of Appendix to 137th Report of PAC (Sixth Lok Sabha)]

Action Taken

The observations of the Committee have been noted. As far as appointment of arbitrator is concerned, Clause 21 of IAFZ-2120 dealing with arbitration has been modified to ensure that any person who has been concerned with the case is not appointed as an arbitrator. Copy of our letter promulgating the revised Arbitration Clause is attached. (Annexure).

[Ministry of Defence O.M. No. 66062/Q/ST-5/3639|D|QS dated 23 July, 1981]

Annexure

Quartermaster General Shakha
Thal Sena Mukhyalaya
Quartermaster General's Branch
Army Head Quarters
DHQ PO. New Delhi-110011.
17 Nov. 79

47503/Q/ST5/Q1(B)
Headquarters
Southern Command
Eastern Command
Western Command
Central Command
Northern Command

AMENDMENT TO CONTRACT FORMS

1. Reference Clause 21 of IAFZ-2120, Arbitration Clause.

2. In pursuance of the discussion by the Public Accounts Committee in Dec. 1978, the existing Clause 21 of IAFZ-2120 on arbitration has been carefully examined and it has been decided in consultation with the Ministry

of Law that the existing clause be replaced by the revised clause given below.

3. *Revised Clause* 21 *of IAFZ*-2120.

"(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matter the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of the officer sanctioning the contract as per powers conferred by clause (i) of article 299 of the Constitution or of any officer appointed by him not below the rank of Lieutenant Colonel. The award of the arbitrator shall be final and binding on the parties to this contract.

(b) In the event of the arbitrator to whom the matter is referred denying, neglecting or refusing to act or resigning or being unable to act, including transfer to another place or his award being set aside by the court, or any reason, it shall be lawful for the contract sanctioning officer to appoint another arbitration in place of the outgoing arbitrator in the matter aforesaid.

(c) It will be no objection that the arbitrator is a Government servant provided that such arbitrator had not been associated with the dispute or difference in question nor had expressed his views on any of the matters in such dispute or difference.

(d) It is further a term of the contract that no person other than the person appointed by the contract sanctioning officer as aforesaid should act as arbitrator and that, if for any reason that is not possible, the matter is not to be referred to arbitration at all.

(e) A demand for the arbitration shall be in writing and made within six months from the date of termination of contract. The date of termination of contract shall mean and include:—

(i) The last date of delivery of goods according to the terms of the contract.

(ii) In case where the contract is cancelled wholly or partly, the date when the letter of cancellation is issued it is also a term of the contract that in case the contractor(s) do/does not

make any demand for arbitration in writing within 180 days of receiving the intimation from the Government that the final bill in settlement of account is ready for payment or the date on which the dispute in regard to interpretation of terms of contract has arisen, the right of the contractor to claim arbitration will be deemed to have been extinguished and absolutely barred and by virtue of abandonment of the claims the Government shall be discharged and released of all liabilities arising out of the performance of the contract and the claims pertaining thereto.

(f) The arbitrator may from time to time with the consent of the parties to the contract enlarge the time for making the award.

(g) It is also a term of this contract that in case where the amount of claim of dispute is Rs. 30,000/- (Rs. 30,000/-) and above the arbitrator shall give reasons for his award.

(h) The venue of the arbitration shall be in place from which the acceptance note was issued or such other place that the arbitrator at his discretion may determine.

(i) Subject as aforesaid, the Arbitration Act, 1940 and the rules thereunder and any statutory modifications thereof for the time being in force or in rules made thereunder shall apply to the arbitration proceeding under this clause.

(k) It is a condition of this contract that mere initiation or continuation of the arbitration proceeding shall operate as suspension or cessation of the rights and liabilities of the parties or the performance of this contract.

(l) In this clause the expression "the officer sanctioning the contract" includes his successor in office or any other officer who is for the time being discharging the duties of such officer in addition to other functions or otherwise".

4. The revised clause issues with the approval of Ministry of Defence *vide* their u.o. No. 5530/D(QS) of 1979 and Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) *vide* their u.o. No. 5587/79 Adv (A) dated 18 Sep. 79.

5. The relevant modified clause should with immediate effect be incorporated in terms of FR Part I Rule 234 in all contracts. Necessary modification in contracts which have already been sanctioned will also have to be carried out in terms of Rule 348 FR Part I.

6. Please acknowledge.

Sd./-
(DS Solanki)
Major
DAQMG Q1 (B)
for Quartermaster General.

Copy to:—

MG SASC/BSASC
Southern Command
Eastern Command
Western Command
Central Command
Northern Command
Comdt ASC School, Bareilly
CGDA, New Delhi,
CsDA
Southern Command
Western Command
Central Command
Northern Command
CDA Patna
Naval HQ (Dte of Clothing and Victualling)
Air HQ (Catering Directorate)
MGO Branch
Ministry of Defence|D (QS)
Ministry of Finance (Defence/B)
Ministry of Law

[Internal distribution

Q/ST1, Q/ST3, Q|ST11, Q|MF3, Q|RV1, Q1( ) and Q1(B)—2 Capes].

Recommendation

The Committee are perturbed to note that the five cases which were referred to arbitration in early 1974 have not been finalised so far when according to the Arbitration Act, awards in the cases should have been given

in four months's time. In this connection, the Committee would draw the attention of the Government to their earlier recommendation made in paragraph 3.271 of their 9th Report (Sixth Lok Sabha) on Forest Department, Andamans and reiterated in paragraph 2.41 of their 131st Report (Sixth Lok Sabha) and emphasise once again that suitable measures should be taken to ensure expeditious conclusion of arbitration proceedings within the statutory time limit of 4 months. The Committee also suggest that in case it is felt that the stautory time limit of 4 months is unrealistic, necessary action for amending the law suitably should be taken urgently by the Ministry of Law.

[Serial No. 8 (Para 1.183) of Appendex to 137th Report of PAC (Sixth Lok Sabha)]

Action Taken

The provision of concluding arbitration proceedings within four months is enacted in the Arbitration Act 1940. The time limit is laid down as adjudication within the shortest possible period is the essence of arbitration. Generally Speaking, the prescribed time is adequate if the parties co-operate and the arbitrator also observes the time schedule to conclude the proceedings in time. In so far as Government are concerned there is no requirement of enhancing the time limit for adjudication as per Law of Arbitration. Administrative instructions have been issued enjoining all officers, who may be associated with arbitration, to ensure finalisation of arbitration proceedings in each case within the prescribed time limit [Copy of instructions No. 67126/Q/STS/Q1 (B) of 19 May 1978 attached] (Annexure

[Ministry of Defence O.M. No. 66062/Q/ST-5|3639|D|Q5 Dated 23 July, 1981]

Annexure

Quartermaster General's Shakha

Thal Sena Mukhyalaya

Quartermaster General's Branch

Army Headquarters

DHQ PO New Delhi-110011

67125/Q/ST.5|Q1(B) 19 May 78

Headquarters
Southern Command
Eastern Command
Western Command (10 copies)
Central Command
Northern Command

FINALISATION OF ARBITRATION PROCEEDINGS IN ASC CONTRACTS-OBSERVANCE OF TIME SCHEDULE TO AVOID UNNECESSARY DELAY AND REFERENCE TO COURTS FOR ENLARGEMENT OF TIME

1. Reference this HQ letters No. B/43528|Q|ST.5|Q1(B) dated 11 Aug., 71 and 67126|Q|ST5|Q1 (B) dated 23 Feb., 78.

2. Under the Law of Arbitration a reference to an arbitrator has to be completed within a period of four months from the date of appointment of an arbitrator by the court or as the case may be. In case arbitration proceedings are not concluded within the said period the proceedings can be continued with the mutual consent of the parties to the dispute to be recorded in writing and a copy thereof is to be appended to the award to be filed in the court for making it a 'Rule of the Court'.

3. It has been observed that in ASC contracts, arbitration proceedings are seldom concluded within the prescribed period of four months and in certain cases proceedings have been continued till finalisation and consent of the contractor to enlargement is deemed to be implied in his participation in the hearing of the case by the arbitrator. Subsequently, award in such cases has been struck down by the court for the reason that prior specific consent of the first party to the dispute was not obtained in writing. This has placed the Government in a very difficult situation. Therefore, whenever the arbitrator proceeds beyond the specific period he must take a written consent of both the parties and record the same.

4. In some other cases, the proceedings have been hampered by the contractor on hypothetical argument where underlying intention is to gain time and evade Government claims. When consent of the contractor to enlargement of time is sought by the arbitrator it is straightway declined. The only alternative under such circumstances is to approach the court for enlargement of time and when this is done, the contractor unhesitatingly blames the State for undue laches. This results in the request for enlargement of time unnecessarily stretching on in the court and add to delay in settlement of Government claims.

5. The above embarrassing situations can be avoided if the officers appointed as arbitrator is on the time schedule of finalising the reference during the initial period of four months. In a large number of arbitration cases in hand it is seen that most of these have not made any headway as the arbitrators appointed have proceeded on posting/out station duties without either entering into reference or finalizing awards. In cases where the parties concerned do not present themselves the case may be poceeded ex-parte when the claimant fails to attend the proceedings

even after being given reasonable notice. We feel that a period of four months is adequate to conclude a reference and it is therefore, enjoined on all concerned that every effort should be made to finalise arbitration proceedings within the stipulated period so that a necessity for extension of time does not arise.

6. It has, therefore, been decided that in each case wherein an arbitrator has been appointed by the OMG, a monthly progress report will be forwarded to this HQ. This will enable this HQ to remain in touch with the progress made in the case and to take measures to ensure speedy finalisation in case of some delay.

7. To ensure proper results the contents of this letter may please be placed before an officer who has been requested to enter into reference in ASC contracts.

8. Please acknowledge.

Sd/-
(Surpat Singh)
Lt. Col.
AQMG (Staff and Coord)
QUARTERMASTER GENERAL.

Copy to:—

MGsASC/BsASC Southern Command Eastern Command Western Command Central Command Northern Command	(10 copies each)	
Q1(B)	—	2 copies

Recommendation

The Committee note that no guidelines have so far been laid down by the Ministry with regard to the appointment of arbitration in the disputes relating to the contracts of supplies by the contractors, while emphasising the need for laying down the broad guidelines for the appointment of arbitrators in such disputes, the Commitee urge that a person appointed arbitrator should not have had anything to do with the case in his administrative capacity. The Defence Secretary informed the Committee

during evidence that "we are also considering whether the present arrangement is satisfactory where the arbitrator writes only 'Accepted' or 'Rejected' and does not explain his decision. This arrangement of the so-called non-speaking order, in our tentative view, is not satisfactory and we are at the moment examining the desirability of laying down that he shall explain the reasons on the basis of which he has given the decision, for the record so that people above have an opportunity to check if he has not acted irresponsibly". In this connection, the Committee would reiterate their earlier recommendations made in paragraph 3.272 of their Ninth Report (Sixth Lok Sabha) on Forest Department, Andemans, that Government should make up its mind and amend the law in such a manner that it would be obligatory on the arbitrator to give reasons for his award. The Committee recommend that conclusive action in this behalf should be taken expeditiously.

[Serial No. 9 (Para 1.184) of Appendix to 137th Report of PAC (Sixth Lok Sabha)].

Action Taken

(a) Clause 21 of IAFZ-2120, which embodies a provision for reference of disputed contracts to arbitration, has been supplemented to state that an officer, who had taken decision over a dispute during the performance of the contract and thereafter will not be appointed as arbitrator.

(b) A provision has also been made in Clause 21 of IAFZ-2120 that wherein the claims of each of the parties exceed Rs. 30,000/-, the award whether rejecting or accepting the claims will be speaking one *viz.* arguments for rejecting or accepting the claims will be given by the arbitrator in the award itself.

Revised clause 21 of IAFZ-2120 which has been vetted by the Solicitor to the Government of India, Ministry of Law, Justice and Company Affairs, as being formally in order, is reproduced below:—

"(a) In the event of any Question, dispute or differences arising under these conditions or any special conditions or contract, or in connection with this contract, (except as to any matter the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of the officer sanctioning the contract as per powers conferred by clause (1) or ariticle 290 of the Constitution or of any officer appointed by him not below the rank of Lieutenant Colonel. The award of the arbitrator shall be final and binding on the parties to this contract.

(b) In the event of the arbitrator to whom the matter is referred dying, neglecting or refusing to act or resigning or being unable to act, including transfer to another place or his award being set aside by the court, or any reason, it shall be lawful for the contract sanctioning officer to appoint another arbitrator in place of the outgoing arbitrator in the matter aforesaid.

(c) It will be no objection that the arbitrator is a Government servant provided that such arbitrator had not been associated with the dispute or difference in question nor had expressed his views on any of the matters in such dispute or difference.

(d) It is further a term of the contract that no person other than the person appointed by the contract sanctioning officer as aforesaid should act as arbitrator and that, if for any reason that is not possible, the matter is not to be referred to arbitration at all.

(e) A demand for the arbitration shall be in writing and made within six months from the date of termination or contract.

The date of termination of contract shall mean and include:—

(i) The last date of delivery of goods according to the terms of the contract.

(ii) In case where the contract is cancelled wholly or partly, the date when the letter of cancellation is issued. It is also a term of the contract that in case the contractor(s) do/does not make any demand for arbitration in writing within 180 days of receiving the intimation from the Government that the final bill in settlement of account is ready for payment or the date on which the dispute in regard to interpretation of terms of contract has arisen the right of the contractor to claim arbitration will be deemed to have been extinguished and absolutely barred and by virtue of abandonment of the claims the Government shall be discharged and released of all liabilities arising out of the performance of the contract and the claims pertaining thereto.

(f) The arbitrator may from time to time with the consent of the parties to the contract enlarge the time for making the award.

(g) It is also a term of this contract that in case where the amount of claim of dispute is Rs.30,000/-(Rs 30,000/-) and above the arbitrator shall give reasons for his award.

(h) The venue of the arbitration shall be in place from which the acceptance note was issued or such other place that the arbitrator at his discretion may determine.

(j) Subject as aforesaid, the Arbitration Act, 1940 and the rules *thereunder and any statutory* modifications thereof for the time being in force or in rules made thereunder shall apply to the arbitration proceeding under this clause.

(k) It is a condition of this contract that more initiation or continuation of the arbitration proceeding shall operate as suspension or cessation of the rights and liabilities of the parties of the performance of this contract.

(l) In this clause the expression "the officer sanctioning the contract" includes his successor in office or any other officer who is for the time being discharging the duties of such officer in addition to other functions or otherwise."

[Ministry of Defence O.M. No. 66062/Q/ST-5/3639/D/QS dated 23 July, 1981].

Recommendation

The Committee also find that the finalisation of contracts was largely delayed due to tendering and retendering again and again. According to the Ministry of Defence, this malady as it stands today is also under examination in consultation with legal and financial advisers. The Committee hope that this examination will be finalised urgently with a view to evolving suitable procedures. The Committee would like to be apprised of the action taken in this regard.

[Serial No. 12 (Para 1.187) of Appendix to 137 Report of PAC (Sixth Lok Sabha)]

Action Taken

Based on the advice of legal and financial advisers, necessary instructions have been issued to Headquarters Commands that additional tendering will be resorted to only in exceptional circumstances and that too with the approval of the Competent Authority. A copy of Army Headquarters letter No. 58379|Q|ST5|Q1(S) dated 21 Nov. 79 is attached (Annexure). The legality of additional tendering|repeated tendering has also been examined in consultation with legal authorities who have again held that action to order additional tender and subsequent negotiation is legal. However, additional tendering must be resorted to only in very exceptional circumstances.

2. An extract from the legal advice obtained is reproduced below:—

"8. I am of the opinion that—

(a) whatever be the terminology used, additional tendering or invitation to reduce rates are no more than invitations for fresh quotations|negotiations, if possible at reduced rates.

(b) It does not appear that there is anything in Law preventing such steps as may be necessary to obtain the best possible price either by additional tendering or by invitation to reduce rates.

(c) The practice of calling for additional tenders or carrying on negotiations should be severally restricted not on account of any illegality inherent in such a course but on account of equitable and administrative considerations.

(d) The lowest tender should ordinarily be accepted unless such acceptance is against public interest.

(e) There is nothing like sanctity of tenders in the matter of negotiation with tenderers for reducing the prices quoted by them. For a fact, quality of opportunity requires that all the tenders should be called to reduce their prices simultaneously rather than in proceeding to negotiate in accordance with comparative scrutiny of the tenders received, say, in the ascending order of the tenders in so far prices are concerned".

[Ministry of Defence O.M. No. 66062/Q/ST-5/3639/D|QS dated 23 July, 1981.]

ANNEXURE

Tele 371625

Quartermaster General Shakha
Thal Sena Mukhyalaya
Quartermaster General's Branch
Army Headquarters
DHO PO New Delhi-110011.
21 Nov. 78.

58379/Q/ST5/Q1 (B)

Headquarters
Southern Command
Eastern Command
Western Command
Central Command
Northern Command

SANCTION OF ASC CONTRACTS—ADDITIONAL TENDERING AND INVITATION TO REDUCE RATES

1. Recently during the examination of a representation to in a case where forfeiture of earnest money consequent to resiling by the tenderers was involved, Solicitor to the Govt. of India, Ministry of Law observed that indiscri-

minate recourse to additional tendering and simultaneous negotiations invitation offers to reduce) on tenders in hand was being resorted to by the Executive Officers|CFAs|CsDA. He opined that such a practice is not only sometimes not in accordance with provisions of Contract Act but against the spirit of advice tendered by the Law Ministry and incorporated in Army Headquarters, QMG's Branch letter No. 58375/Q/ST6B/Q1(B) dated 28 Nov. 58. He was further of the view that such practices followed in processing of tenders or contract documents many a times are likely to infringe legal provision and may not stand the scrutiny of law if challenged in the court causing embarrassment to the Government.

2. It is, therefore, proposed to *de novo* examine the practice of additional tendering as it has come into being at present since its inception and adoption, in consultation with Ministry of Law, other administrative and financial authorities. Such examination, for obvious reasons, would take some time.

3. In the meantime it is considered advisable to draw the attention of all concerned to the policy enunciated in para 5 of our letter No. 58375/Q/ST6B/Q1 (B) dated 28 Nov. 58 which *inter alia* states that additional tendering will be resorted to in very rare cases and that too with the approval of the CFA, for observance in letter and spirit.

Sd/-
(DS Solanki)
Major
DAMG Q1 (B)
For Quartermaster General

Copy to:—

MGsASC/BsASC
Southern, Eastern, Western, Central and Northern Commands
The CGDA, New Delhi, The CDA Patna
The CsDA Southern, Western, Central and Northern Commands

Recommendation

From the perusal of the details of a number of contracts highlighted in the Audit paragraph, relevant information furnished and evidence tendered before the Committee, the Committee have formed an impression that contractor 'A' has enjoyed a monopoly position in the field of supply of meat to the Army. The Committee would like the Ministry to probe whether this position has been acquired by contractor 'A' by any unfair means in collusion with unscrupulous elements in the official heirarchy.

[Serial No. 13 (Para 1.188) of Appendix to 137th Report of PAC (Sixth Lok Sabha)].

Action Taken

This point has been investigated by an Inter Ministerial Committee constituted by Ministry of Defence. As per findings of the Committee, contractor 'A' (M/s. ATCO Pvt. Ltd.) has been holding the contracts for the supply of meat at Golconda and Trimulgherry for the past several years and has built up the necessary infra-structure and near permanent establishment of his own operation of these contracts. It is, therefore, logical that such an established firm would be in a better position to quote most competitive rates to secure the contract. Due to reasons of financial investments business expertise necessary for running large scale meat cotracts like the ones at Golconda and Trimulgherry, competition is limited to a few well established contractors. The Committee has further stated that the precise role of the executive officer, the financial adviser and the competent financial authority empowered to sanction a contract as clearly laid down have been followed and necessary checks to ensure a fair and impartial treatment to all tenders has been implemented. All officers connected with the contract have acted with due sense of responsibility and keeping in view the common aim of achieving most favourable rates in the best interest of the State. The Committee could find no evidence to deduce that any efforts were made/ directed with a view to achieve/give any undue benefit by/to a particular contractor in any direct or indirect manner in the case.

[Ministry of Defence O.M. No. 66062/Q/ST-5/3639/D/QS dated 23 July, 1981].

Recommendation

What appears to be still more irregular is the fact that the value of the animals handed over to the contractor was not recovered from him and payment of his claim was made in February 1976. In addition, the contractor derived additional regular advantage of Rs. 0.76 lakh by selling skins and offals of the animals purchased by the Department. The contractor obtained in December 1973, court orders to refer the question of non-acceptance of edible offals of the animals slaughtered to arbitration, including the attendant risk and expense purchases and for stay against the recovery of Government claims. According to the Ministry, the payment was made to the contractor as he threatened to launch contempt of court proceedings. The restraint by the court against withholding of payment of bills was because the contractor was under obligation to make supplies till March 1974 and he might have suffered irreparable injury if his bills were withheld. This highlights the Ministry's own lapse, as they failed to take timely action

to rescind the contract even when the CDA had advised in November 1973 for rescission of the contract but the contract was ultimately rescinded on 5 March, 1974 when only a few day's were left its completion.

[Serial No. 15 (Para 1.90) of Appendix to 137th Report of PAC (Sixth Lok Sabha)].

Action Taken

The observation of the Committee have been noted.

[Ministry of Defence O.M. No. 66062|Q|ST-5|3639|D|QS dated 23 July, 1981]

Recommendation

The Committee regret to note yet another costly lapse connected with the aforesaid contract for Supply Depot 6 with contractor 'H'. About a year after the rescission of the contract, the contractor represented in February 1975 that as a control order governing meat price was in force with effcet from 16 August, 1973, payment for his supplies for the period 16 August, 1973 onwards be made at Control Order rates. Strangely enough, the contractor was paid an amount of Rs. 1.75 lakhs in March 1976 on account of the difference between the contract rate and the maximum stipulated in the control order. The Committee consider this to be highly irregular as the control order had stipulated the ceiling for the maximum of price and not the floor price.

[Serial No. 17 (Para 1.192) of Appendix to 137th Report of PAC (Sixth Lok Sabha)].

Action Taken

The recommendations of the Committee have been noted.

[Ministry of Defence O.M. No. 66062/Q/ST-5/3639/D/QS dated 23 July, 1981].

Recommendation

According to the Ministry, the payment was made by them on the basis of the legal advice. The Committee fail to understand the need for referring the matter again to the Ministry of Law, when the Assistant Legal Adviser to the Government of India, Bombay, Ministry of Law had earlier opined that the contract rate was not violative of the control order and the question of making additional payment to the contractor did not arise.

Even the legal opinion subsequently given by the Solicitor to the Government of India, on the basis of which the additional payment of Rs. 1.75 lakhs was made did not warrant such an action as it only stated "If there is a control order in force, the price shall be the maximum fixed under the control order in force at the time of delivery". In the Committee's view, it simply explains the significance of the control order, which stipulates the fixation of ceiling price. The Committee fail to understand as to how the Ministry interpreted the legal advice of the Solicitor to authorise them to make a payment of Rs. 1.75 lakhs. That this action of the Ministry was not justified is borne out by the rejection subsequently of another claim of the same contractor for Rs. 0.23 lakhs being the difference between the price paid for the eggs supplied and the price fixed under the control order in consultation with the Legal Adviser (Defence) and the Solicitor to the Government of India. In view of the fact that Government are advised that the claims for recovery of the excess amount paid to the contractor would not be maintainable in court, the Committee can only deprecate this costly lapse on the part of the Government.

[Serial No. 18 (Para 1.193) of Appendix to 137th Report of PAC (Sixth Lok Sabha)]

Action Taken

The recommendations of the Committee have been noted.

[Ministry of Defence O.M. No. 66062|Q|ST-5/3639/D|QS dated 23 July, 1981]

Recommendation

The Commi tee regret to note yet another case of heavy extra expenditure of Rs. 6.71 lakhs incurred by the Department due to delay in the finalisation of a contract within the validity period of 1-11-1975 for the supply of meat|poultry|eggs/bread for the period October, 1975 to September, 1976 for station 'X' of Command II. The reasons for delay are stated to be under investigation through a staff court of enquiry. The Committee would like to know the outcome of this enquiry and action taken thereon. This case brings to light yet another irregularity where a suggestion was made by CDA for the issue of an additional tender to a contractor who had not tendered against original tender enquiry but subsequently offered telegraphically to quote lower rate. According to the rules, no cognizance of telegraphic communication can be taken. The Committee are informed that CDA's views in this behalf are being obtained. The Committee would like to know these views alongwith Ministry's comments thereon.

[Serial No. 19 (Para 1.194) of Appendix to 137th Report of PAC (Sixth Lok Sabha)].

Action Taken

The delay in conclusion of this contract has been investigated by a Court of inquiry. The reasons for delay in conclusion of the above contract as brought out by the court of inquiry are as under:—

(a) The executive officer and intermediary CFA at 101 Comn Zone Area took timely action to initiate tender enquiries as early as second week of May 75 while the contract was to start from 1 Oct. 75. While recommending the santcion of contract, DCDA Shillong advised that skin rates be increased. After making all efforts to achieve lowest compatible rates by doing two negotiations in consultation with DCDA Shillong on tenders opened on 7 Jun.' 75 skin rates were increased from Rs. 2/- to Rs. 3/-. The contract papers duly recommended by GOC 101 Area were forwarded to HQ Eastern Command on 28 Jul. '75. On 2 Aug. '75, BASC Eastern Command forwarded the contract documents to CDA Patna seeking their advice pointing out that while the meat rates achieved are 13.1 per cent lower than CCR the rates of skin are only Rs. 3. No recommendation of BASC were endorsed at this stage. The case remained under consideration of BASC Eastern Command and CDA Patna upto 30 Sept. '75 wherein CDA Eastern Command kept insisting on increase of skin rates and reduction in bread rate either by doing another additional tender or by negotiations. The executive authority however did not consider the advisability of doing another additional tender but kept trying for desired rates through negotiations with M/s Kashi Nath Shaw (Contractor 'I') who never responded. The CDA again reiterated that HQ Eastern Command could sanction the contract under Rule 240, FR Part I in case rates of skin are not increased. Since it was not considered a clear advice, Staff HQ Eastern Command asked CDA to give clear advice as the validity of tender was running out and because comparison of skin rate of Aijal cannot be done with that of Barrackpore as had been done by CDA. BASC HQ Eastern Command also asked DDST 101 Comn Zone Area to get validity of offer extended from 1 Nov. '75 to 30 Nov '75 which despite best efforts of the latter the contractor did not oblige. The case was again put up to GOC-in-C on 27 Oct 75 who recommended the contract to be sanctioned by QMG but since the validity was not extended the contract could not be processed within the validity period since atleast 15 days are required for examination of the contract at Army Headquarters and Ministries of Defence

and Finance (Defence). The delay between 12 Jun' 75 to 29 Oct' 75 has, therefore, occurred as the executive officer at Command HQ did not make specific recommendations to CDA at the initial stage and to GOC-in-C in the final stage. The case to GOC-in-C was put up on 6 Oct. '75 while the contract papers at Command HQ were received by end of Jul. '75. From the sequence of events, it is however, seen that intensive efforts were made by BASC to achieve maximum economy by getting enhancement of skin rates and perhaps he heavily relied on the contractor for extending his validity which he (the contractor) did not.

(b) Staff HQ Eastern Command intermediary CFA at Command HQ seemed to shy off from recommending the contract against the advice of CDA under Rule 240 FR Part I due to fear that in case it is done they may be answerable at a later date.

Why did CDA Eastern Command took cognizance of Telegram of Contractor 'I' (Shri Avtar Singh)

Answer B

The court of inquiry has brought out that the CDA Eastern Command *vide* their letter No. SC/I/SHG/DCDA/Meat/XV dated 8 Aug 75 forwarding telegram of contractor 'J' (Shri Avtar Singh) to BASC Eastern Command advised that "since the contract is to commence from 1 Oct 75 and as there are 1½ month in hand, we have no objection if any additional tender is floated, provided CFA is satisfied that substantial saying is likely to accure as Shri Avtar Singh who is a registered contractor has offered to quote lower rates. His subseqent letter to come may also be examined in that light.

The representative of CDA Eastern Command in his deposition before the court of inquiry has contended that they wanted to bring to the notice of BASC Eastern Command the contents of the telegram for their consideration and therefore suggested doing additional tender and giving tenders to Shri Avtar Singh to achieve maximum economy.

It is felt that the delay in finalisation has taken place due to faulty system of contract conclusion wherein the executive officer, CFA and Financial Advisers did not function from common understanding on acceptance of tendered rates in relation to market trends. The same has since been rectified with the issue of instructions in new contract procedure *vide* Government of India letter No. A/42099/O/ST5/6438/D (QS) dated 25 Sep 78.

[Ministry of Defence O.M. No. 66062|Q|ST-5|13639|D|QS dated 23 July 1981]

CHAPTER III

RECOMMENDATIONS OR OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF GOVERNMENT'S REPLY

Recommendation

The Committee are perturbed to note that in all the 25 cases pertaining to Command I for the year 1973-74, where the contractors went into litigation, the contracts were awarded on the basis of their quoting the rates in Part II only. It is rather anomalous that the procedure evolved in 1971 for calling rates in two parts was given a complete go by in all these 25 cases and the contractors quotations in Part II only were approved. The Ministry of Defence have conceded that a comprehensive study could not be made as the contractors did not quote rates for Part I. The Committee would like the Ministry to examine as to how these quotations were considered valid then according to the conditions of tender the parties were required to quote rates in two parts.

[Serial No. 4 (Para 1.179) Appendix to 137th Report of PAC (Sixth Lok Sabha)].

Action Taken

Although the tenderer is invited to quote rate for all the items given in the schedule but it is not obligatory that he must quote rates both in Part I and II of the schedule and for all the items. In this connection please refer to clause 2 (ii) of IAFZ-2137A (Instruction to tenderers) forming part of contract deed. This clause reads as under:—

> "2(ii) It is not essential that you should tender for all the items shown in the Schedule or even for more than one. You may submit two tenders for each item if you wish to do so, in (a) the rate at which you are willing to supply each item separately (b) a low rate at which you would supply in consideration of your tender rates for all the items being accepted, but in the latter case, you must distinctly state tha these rates are only tendered on this consideration." . .

Further, as per clause 12 of IAFZ-2137A (reproduced below), the CFA reserves to himself the right to reject in whole or in part any tender

or any item in respect of any or all the delivery points shown in the schedule:—

> "12. The approval or rejection of tenders rests with the officer who sanctions the contract as specified in FR Part I who reserves to himself the right of rejecting any tender in whole or in part or any item in whole or in part in respect of any or all the delivery points shown in the schedule (IAFZ-2121) without cause assigned. The lowest tender will not of necessity be accepted."

3. As per the existing practice AC contracts are generally concluded with the lowest tender taking into consideration the overall cost of the quantities required as indicated in the schedule. The CFA in consultation with his financial adviser is charged with the responsibility to decide each case on its merits keeping in view the course of action best suited to safeguard the interest of the State. The same touchstone was applied in each of the 25 cases which came up for arbitration on meat offals cases in Southern Command and contract awarded only to the tenderer whose contract value was adjudged as the lowest by the competent officers and financial adviser (CDA).

[Ministry of Defence O.M. No. 66062/Q/ST-5/3639/D/QS dated 23 July 1981].

Recommendations

The Committee are distressed over an instance of gross negligence on the par' of the authorities dealing with a contract for supply of meat to Supply Depot No. 6 for 1973-74 valuing Rs. 18.38 lakhs. According to the conditions of supply, contractors are required to maintain at all times a reserve of animals of not less than 3 days' supply in the depot butchery based on the average number of animals slaughtered daily. As contractor 'H' failed to maintain the stipulated reserve the depot authorities *suo moto*, without any request having been made by the contractor purchased as many as 2541 animals costing Rs. 2.98 lakhs, and handed them over to the contractor for slaughter, even without obtaining a formal receipt in this behalf from the contractor. According to the Ministry, this purchase was made under the risk and expense clause in the contract. The Committee consider that the Department had gone quite out of way to purchase such a large number of animals on behalf of the contractor.

[Serial No. 14 (Para 1.189) of Appendix to 137th Report of PAC (Sixth Lok Sabha)].

Action Taken

The average requirement of animals was 80 animals per day. As inspite of repeated warnings, the contractor continued to fail to maintain the reserve and tender ainmals for day to day slaughter, the contract operating officer had no option but to purchase animals at the risk and expense of the contractor. Accordingly, he purchased 2541 animals which number comes to approximately a month's requirement. These animals were purchased by the contract operating officer not in one day but during the period from 20 Oct., 73 to 16 Nov. 73 to meet daily requirements as well as to be able to maintain the reserve. The daily off take of animals was approximately 80. Accordingly, animals were purchased for 28 days for normal issues and 3 days reserves which works out 2480 animals. The excess of 61 animals purchased is considered to be negligible and perhaps due to uneven weight of animals and possible fluctuations in the feeding strength. It will thus be seen that the contract operating officer had merely endeavoured to supply the basic item at the risk and expense of the contractor.

It may be stated here that the case has since been adjudicated by the arbitrator and a sum of Rs. 5.93 lakhs which includes cost of animals has since been awarded in favour of the Government. The award has been filed on the advice of Legal Adviser (Defence) to make it rule of the Court.

[Ministry of Defence O.M. No. 66062/Q/ST-5/3639/D/QS dated 23 July 1981.]

Recommendation

The Committee are unhappy to find yet another case of delay in the finalisation of a meat contract for the period October, 1975 to September, 1975 for station 'Y' of Command II. In this case, though the lowest quotation of contractor 'I', in response to tenders invited in May, 1975 was only 2.8 per cent higher than the last contract rates, tendering/retendering was resorted to on 14 occasions and the contract finally concluded on 6 March, 1976 for the period 12 March to 30 September, 1976, was at rates 7.2 per cent higher than the last contract rates, resulting in an extra expenditure of Rs. 1.16 lakhs. The Committee are informed that a staff court of inquiry ordered in this case to fix responsibility for this delay is in progress. The Committee would like to know the result of this inquiry and action taken thereon.

[Serial No. 20 (Para 1.195) of Appendix to 13th report of PAC (Sixth) Lok Sabha)].

Action Taken

1. The cause of delay has been investigated by a Court of Inquiry. The reasons for non-finalisation of contract with the validity period as brought out by the Court of Inquiry are given below:—

2. Reasons for non-finalisation of contract by 1 Oct., 1975 in the Date of Commencement.

(a) From the records available it is seen that timely action had been taken by the Executive officer at 101 Comn. Zone Area by commencing the tendering action as early as 14 May, 75 and exhausted all his efforts to reduce the rates as desired by the DCDA by 9 Aug, 75 when the rates achieved were 0.4 percent below as compared to the current contract rates.

(b) It was due to the insistence of DCDA Shillong for asking an additional tender/negotiation that a further delay was caused till 9 Sep, 75, Subsequently further delay was caused till 25 Sep-75 since CDA Patna insisted on further reduction of rates while the contractor had already declined earlier invitations for the same.

(c) While finally the Army Commander recommended the contract for sanction to Army HQ on 4 Oct. 75, the contractor resiled on 6 Oct. 75 before the contract could be considered/sanctioned by the QMG.

(d) It would, therefore, be seen that delay has occurred due to the system of processing the contract documents where executive authority and their financial advisers did not reach a common understanding in regard to suitability of rates achieved for acceptance and finalisation of the deed.

3. Reasons for Non-finalisation of Contract with Second Lowest Tender upto 1 Nov. 75.

(i) At the time M/s. Hind Supply Corporation (Contractor 'L') resiled from his offer on 6 Oct. 75, other tenders were valid upto 1 Nov. 75. At this stage the Second lowest tenderer in this (third call) was M/s. Mohd. Razauddin (Contractor 'M') and his rates were Rs. 991-for meat dressed, Rs. 482 for MOH and Rs. 2 for skin. The resiling action of M/s-Hind Supply Corporation in this case was not clear to the executive authority at Area/Command HQ as the telegram of 6 Oct. 75 mentioned about contractor's offer of 7 Jun. 75 while the offer under consideration at that stage at Army HQ was that of 30 Jun, 75. It was only on 11 Oct. 75 when the contractor called on BASC that the resiling action was confirmed. BASC Eastern Command on 16 Oct. 75 advised 101 Comn. Zone Area to

process the contract with second lowest tenderer and also to float simultaneous additional tenders to assess the market and reasonableness of rates of second lowest tenderer. When M/s. Mohd. Razauddin and Co. did not respond to the invitation for extension of validity of tender till 18 Oct. 75, the contract documents were processed with DCDA Shillong. DCDA Shillong, however, insisted on the increase in skin rates though generally concurred with the rates of meat on 22 Oct. 75. Additional tenders as earlier advised by HQ Eastern Command were also opened on this day without any response. The contract documents were sent to BASC Eastern Command on 23 Oct. 75 for further action who returned the documents to 101 Comn. Zone Area on 29 Oct. 75 to get the validity extended upto 30 Nov. 75. Since a minimum of 15 to 20 days were required to process this contract at Army HQ, the contractor was asked to extend validity upto 30 Nov. 75 but the contractor did not turn up and the validity of the offer lapsed.

(ii) It will be seen that the offer of the second lowest tenderer could not be clinched as he did not extend the validity which showed that he was not interested in running the contract at the rates he had offered.

4. *Reasons for additional tendering.*

From 14 Aug. 75 to 2 Sep. 75, fresh/additional tenders were called for eight times but the rates quoted though considered reasonable by the Executive authority were not considered economical by the financial adviser as according to them the general pattern of reduction achieved in other stations of Eastern Command was in the region 3.2 per cent to 13.7 per cent below the last years rates while here only 0.4 per cent reduction had been achieved.

5. *Whether resiling by the Contractor was within the validity period...*

The validity of the offer of the set of tender opened on third call on 30 June. 75 was 1 Nov. 75 while the contract was to commence from 1 Oct. 75. The tenderer resiled on 6 Oct. 75 and therefore, his earnest money amounting to Rs. 28,300/- was forfeited.

6. It is felt that no single agency or other officer dealing with the case can be held responsible for the failure in conclusion of the contract in time. The delay in conclusion of contract was primarily due to resiling from the offer by M/s. Hind Supply Corporation (the lowest tenderer on 6 Oct. 75) and not because of fault of the Department. It was perhaps the lacunae in the system of contract conclusion wherein the executive officers, CFAs and Financial Advisers did not function from common understanding on acceptance of tendered rates in relation to market trends. The same has since been rectified with the modified contract procedure having been brought into use *Vide* Govt. of India letter No. A/42099/Q/ST6/6438/D (QS) dated 25 Sep. 78.

[Ministry of Defence O.M. No. 66062/Q/ST-5/3639/D/QS dated July, 1981].

CHAPTER IV

RECOMMENDATIONS OR OBSERVATIONS IN RESPECT OF WHICH REPLIES OF GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation

Para 1.185. The Committee are deeply concerned to note that due to delay in the finalisation of tenders for the supply of meat in Supply Depots in Command II, Government had to incur quite a substantial amount of additional expenditure both in the shape of contracting at higher rates than those initially tendered and also effecting local purchases of meat at higher rates during the intervening 'no contract' periods. On persuing the reasons for the delays in contracts relating to some Supply Depots in the Command, the Committee are firmly of the opinion that with proper planning and concerted approach, these delays could have been eliminated and the contracts finalised in time. Some instances of such delays in respect of some Supply Depots for the meat contracts for the period 1 October 1976 to 30 September 1977 and the resultant infructuous expenditure are listed below:—

(i) Contract for Supply Depot No. 1 was concluded with contractor 'A' on additional call on 23 November 1976 and commenced on 29 November 1976. Contractor 'A' did not quote in the initial call. During the 'no' contract' period upto 28 November 1976, meat supplies were arranged by effecting local purchase at the average local purchase rate of Rs. 835 per 100 kgs. An approximate additional expenditure of Rs. 1,10,160 and Rs. 1,92,780 as compared to the previous and future contract rate of Rs. 767 and Rs. 715.80 respectively was incurred.

(ii) The contract for Supply Depot No. 2 was concluded with contractor 'A' at Rs. 934.80 per 100 kgs. on 29 January 1977 as the authorities could not give timely acceptance to the offers of Rs 727 of contractor 'D' and Rs 734 of contractor 'C'. This has resulted in additional extra expenditure of Rs 6.16 lakhs by way of increased rate and Rs. 1.40 lakhs on account of local purchases made from contractor 'A' itself.

(iii) Contract for Supply Depot No. 3 was awarded to contractor 'A' for the period 9-12-1976 to 30-9-1977 at the rate of Rs. 737 per 100 kgs. as a result of third call when a tenderer had

quoted Rs 625 per 100 kgs in August 1976 in response to first call, but it could not be accounted before the date of commencement of the supplies. 'A' did not quote in the earlier calls.

(vi) Contract for Supply Depot. No. 4 was awarded to contractor 'B' as the rate of Rs. 786 per 100 kgs. as a result of second tender floated in January 1977, as the authorities could not give timely acceptance in the quotation of August 1976 for Rs 687 from contratcor 'F' and later on reduced to Rs 611 on 10 September 1876 as a result of negotiations. The delay has resulted in an extra expenditure of Rs 4.90 lakhs.

This delay is more serious in view of the fact that while seeking approval of the QMG on 13 October 1976, the Command HQ had clearly indicated that the offer was valid upto 1 November 1976. But the tender was approved by QMG only on 3 November 1976 after the expiry of the validity of offer. . . .

(v) The contract for Supply Depot. No. 5 was finalised with contractor 'B' at the rate of Rs 795 per 100 kgs only for the period 16-4-1977 to 30-9-1977 due to delay is not giving timely approval to the negotiated on fourth call with contractor 'G', resulting in extra expenditure of Rs. 3.04 lakhs.

Para 1.186. The Committee are unhappy to note that the instructions issued by Ministry of Defence in August 1971 that the administrative authorities should take all possible steps to obviate delays in finalising contracts so as to avoid consequential loss to the Government have had no effect on the authorities concerned and delays continue to occur causing irrepairable loss to the public excheque. The Committee have been informed that recently the Ministry have evovled a procedure which will be tried on experimental basis for two years to overcome delays in the finalisation of such contracts. According to this procedure the tenders are to be jointly examined by a panel of officers comprising Exceutive Officer and representatives of CFA and CDA. The Committee would impress upon the authorities to closely watch the practical working of this procedure with a view to further impoving the procedure, if necessary, in the light of experence. . .

[Serial Nos. 10 and 11 (Paras 1.185 and 1.86) of Appendix to 37th . . Report of PAC (Sixth Lok Sabha)].

Action Taken . .

1. Headquarters Commands have already been asked to keep a close watch on the functioning of the new procedure for conclusion of ASC contracts introduced vide Govt of India, Min. of Def. letter No A/42099/ Q/ST5/6438/D(Qs) dated 25 Sep. 78 (Appendix 'I') and submit a detailed report through respective CsDA so as to reach this Headquarters by 15 Nov., 80.

2. The procedure will be reviwed after 15 Nov., 80 on receipt of detailed reports/ recommendations from Commands|CsDA.

[Ministry of Defence O.M. No. 66062/Q/ST-5|3639|D|Qs dated 23 July, 1981].

CHAPTER V

RECOMMENDATIONS OR OBSERVATIONS TO WHICH GOVERNMENT HAVE FURNISHED INTRIM REPLIES

Recommendation

In addition to two cases relating to supply Depots No. 1 and 2, which have been dealt with in the preceding paragraph, there were 23 more such arbitration cases pertaining to non-acceptance of all offers against 1973-74 meat contracts, relating to other Supply Depots in Command I. The total claims for these cases amounted to Rs. Rs. 61.17 lakhs. Out of these 23 cases, two claims for Rs. 2.95 lakhs were awarded against the Government in May 1977 for Rs 1.05 lakhs. Out of the 13 cases, awards for which went in favour of Government, 2 were subsequently set aside by the court, 8 have been made rule of the court and remaining three have not yet been made rule of the court. As many as five cases are still under arbitration and in respect of remaining 3, claims have not been projected by contractors. What distresses the Committee is the fact revealed in the Audit paragraph that though contractual provisions involved in these disputes as well as submissions by the contractors in all these cases were identical, the awards in two cases were given in favour of the contractor while in 13 cases the awards were in favour of the Government. This only goes to prove that cases were not presented before the arbitrator or the court properly in all cases. As regards the three cases which have not yet been made rule of the court, the Committee desire that the Ministry should take energetic action to secure the rule, so that conclusive action on these cases could be taken.

[Serial No. 7 Para 1.82) of Appendix 137th Report of PAC (Sixth Lok Sabha)].

..Action Taken

The claims of the contractors in all the three cases have been negatived by the arbitrators. In one of these cases Government claim have been conceded and this case is pending in Delhi High Court to be made 'Rule of the Court'. This case has not been finalised on account of frequent changes in the Government Counsel. The Litigation Section (High Court) Ministry of Law have been requested to ask the present Government Counsel to process the case on priority basis.

The remaining two cases where the financial effect is nil are pending in courts for being made 'Rule of the Court'. Headquarters Southern

Command have been asked to ensure speedy finalisation of the cases in the courts. ....

[Ministry of Defence, O.M. No. 66062/Q/ST5/3639/D/Qs dated 23 July, 1981]

Recommendation

The Committee have been informed that this case has since been adjudicated by the arbitrator and a sum of Rs. 5.93 lakhs, which includes cost of animals, has been awarded in favour of the Govt. The award has not yet been made rule of the court. The Committee would like the Ministry to take urgent necessary action for obtaining rule of the court on this award and thereafter to secure realisation of the amount awarded from the contractor.

[Serial No. 16 (Para 1.191) of Appendix to 137th Report of P.A.C. (Sixth Lok Sabha)].

Action Taken

The awards were filed in Bombay High Court on the advice of legal Adviser (Defence) but the Bombay High Court has now directed that these be filed in Delhi High Court which has jurisdiction in the cases. The awards have been filed in Delhi High Court on 02 Jan 80, to make these a 'Rule of the Court'.

[Ministry of Defence O.M. No. 66062/Q/ST-5/3639|D|Qs Dated 23 July, 1981]

NEW DELHI;
September, 8 1981
Bhadra 17 1903 (*Saka*)

SATISH AGARWAL,
Chairman
Public Accounts Committee.

APPENDIX I

No. A/42099/Q/ST5/6438/D(QS)
Government of India,
Ministry of Defence,
New Delhi, the 25th September, 1978.

The Chief of of the Army Staff

SUBJECT : *Procedure for conclusion of ASC contracts for perishables.*

Sir,

I am directed to refer to this Ministry's letter No. 48583/Q/ST6B/7714/D7 dated 21st July, 1950 and to state that not withstanding the relevant portions of the procedure laid down in Financial Regularations Part I, Regulations for the Army, ASC Regulations, ASC Training Volume II—Chapter XIX and pamphlet 'A' Guide to ASC Contracts', in order to help timely conclusion of contracts at most economical rates, the procedure as enunciated in the succeeding paragraphs would be followed.

Local Market Rates

2. The Market Research Cells (MR Cells) authorised to ST Branch in different Area Headquarters will be responsible to formulate average market rates for each item/station in their jurisdiction for each quarter based on the following sources:—

(a) Market Survey *i.e.*, study of major markets and market practices in their areas.

(b) Study and evaluation of all reports/data compiled and published by local/provincial/Central Government departments/agencies in respect of items of interest to ASC.

3. These rates will be compiled for each quarter and forwarded to respective CsDA for their scrutiny and advice, alongwith documents pertaining to sources of information/date. These rates will henceforth be also entered in the Comparative Statement of Tenders (CST) alongwith the rates obtained and published monthly by an officer authorised by Station Commander or Quarterly Station Board of Officers under the provisions of ASC Training Volume II—Para 958, Government of India. Ministry of Defence letter No. 58311/Q/ST6B/7323/DQ dated 30th June 1951.

4. In the case of contract in Northern Command, the ALMR (Average Local Market Rates) will also be evolved by respective executive officers authorised to conclude contracts for stations under the jurisdiction based on the sources in the preceding paragraphs.

Rate Pattern for Contracts

5. The MR Cells and the executive officers mentioned in para 4 above will also carry out scientific valuation of whole sale market rates in their areas and evolve a reasonable rate pattern in respect of various items/ stations for the impending contracts to serve as a guide based on the followings:

(a) Pattern of contract rates for past three years.

(b) Local availability and ALMR of nodal stations.

(c) Cost of transportation and any others incidental like actual cost at mandi, statutory mandi levies, local octroi/taxes.

(d) Forceeable escalation/de-escalation of rates based on mean price index.

6. The pattern so evolved will be forwarded to concerned CDA duly supported by all records/Study report/publications of civil Government departments/agencies three months priod to the actual date of commencement of contracts. The compilation and the process of arriving at the rate pattern would be done in close consultation and advice of the concerned CDA. This information would be kept confidential. The procedure of rate pattern evolved by the MR Cells will be revised one year after issue of this letter.

Process of Tenders

7. The tenders pertaining to ASC contracts, after the same have been opened by board of officers at Headquarters Command/Corps/Area level listed at Appendix 'A' to this letter:—

(a) The executive officers as nominated under constitution Clause 299.

(b) Representative of Area/Formation Commander at appropriate level listed in Appendix 'A'.

(c) Representative of respective CsDA.

8. The officers listed in para 7 above will be responsible to examine the tendered rates in relation to an acceptable level which would be mutually arrived at between executive officers, representative of regional

CDA and CFA, and for this purpose representative of CDA will be positioned at stations given in Appendix 'A' on fixed dates decided in consultation with CsDA before the commencement of the contract to enable completion of the process.

9. In case the rates received through tenders are considered uneconomical, an invitation offer to reduce these to the desired level will be made first to the lowest tenderer and thereafter to second lowest and other in that order by the officers mentioned in para 7 above until the desired rate level is achieved. Results of these negotiation (s) alongwith their recommendations recorded on the proforma for invitation offer to reduce, which would be attached to the CST. The CST will henceforth be endorsed conjointly by all the three representatives given in para 7 above and there will be no requirement of sending the same alongwith contract documents for pre-scrutiny to the concerned CDA. The contract papers will be put up to the appropriate CFA with the recommendations of intermediary authorities after aforesaid necessary endorsement in the normal manner. The contract documents of divisions/sub areas responsible for conclusion of contracts will also be examined by the officers mentioned in para 7 at the Command/Corps/Area Headquarters as applicable.

10. The tenders after vetting, including offers of invitation to reduce and the result thereof, would either be recommended for acceptance or rejection, save in exceptional cases when additional tendering is advised. Attention is drawn to Army Headquarters letter No. 58375/ST5/QI(B) dated 31st May 1971 in this regard. The panel of officers after full, free and frank discussion and appraisal of rates would make joint recommendations on the CST for consideration of CFA either for acceptance of rates or rejection thereof suggesting retendering, additional tendering under very exceptional circumstances. The aspect of splitting of the contract and changing periodicity are administrative aspects of the contract on which the panel of officers could definitely make their recommendations for consideration by the CFA.

11. The procedure as outlined in this letter will be effective within 15 days of the issue of this letter and remain operative for a period of two years.

12. This letter issues with the concurrence of Ministry of Finance (Defence) *vide* their U.O. No. 3303/QB dated of 1978.

Sd/-.
Under Secretary to the
Government of India.

Copy to:

The Controller General of Defence Accounts.

The Director of Audit, Defence Services.

The CsDA Southern, Western, Central and Northern Commands.

The DA Patna.

The QMG(Q) Ministry of Finance (Defence).

The QMGs Branch (ST5) with 50 spare copies.

QI (B)—2 copies.

Copy signed in ink to:—

The CsDA, Southern, Western Central and Northern Commands.
The CDA Patna.

Appendix 'A' to Government to Iudia Min. of Defence letter No. A|42099| Q/ST5/6438/D(QS) dated 25 September, 1978.

LIST OF AREAS/FORMATIONS NOMINATED

1. HQ PH and HP Area
2. HQ Delhi Area
3. HQ UP Area
4. HQ MP B and O Area
5. HQ 101 Area
6. HQ Bengal Area
7. HQ ATNK and K Area
8. HQ M and G Area
9. HQ 61 (Indep) Sub Area
10. HQ Northern Command
11. HQ 15 Corps (Including subordinate formations concluding contracts)
12. HQ 16 Corps (including subordinate formations concluding contracts)

APPENDIX II

CONCLUSIONS OR RECOMMENDATIONS

Sl. No.	Para No.	Ministry/Department Concerned	Recommendation
1	2	3	4
1	1.3	Ministry of Defance	The Committee require that final replies to the recommendations in respect of which interim replies have been furnished, should be submitted expeditiously.
2	1.7	-do-	The Committee had expressed deep concern over infructuous expenditure due to delay in the finalisation of tenders for the supply of meat in Supply Depots in a Command. The Committee had felt that with proper planning and concerted approach, these delays could have been eliminated and the contracts finalised in time.
3	1.	- do-	The Committee note that in September, 1978, the Ministry of Defence issued instructions modifying the procedure for award of contract with a view to ensuring their timely conclusions at most economical rates. The Market Research Cells in different Area Hqrs. were made responsible for formulating average market rates for each item/station in their jurisdiction for each quarter based on market survey and study/evaluation of all reports/data compiled and published by local/provincial/Central Government Departments/agencies. The compilation and the process of

1	2	3	4
			arriving at the rate pattern was to be done in close consultation with and advice of the concerned Controller of Defence Accounts. The procedure was to be reviewed after two years (*i.e.*, in November 1980).
4	1.9	Ministry of Defnaoe	The Committee find that the Ministry's note dated 23 July 1981 is silent on the question whether the procedure has since been reviewed. Apparently, no such review seems to have been carried out. The Committee desire that this may be done without loss of time with a view to ensuring that delays of the type commented upon by the Committee in their earlier Report, leading to heavy infructuous expenditure-are obviated.